IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 252 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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THE STATE OF GUJARAT

Versus

SAVAJIBHAI BECHARBHAI HARIJAN AND OTHERS

Appearance:

1. Criminal Appeal No. 252 of 1994

MR MA BUKHARI, APP, for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/07/2001

ORAL JUDGEMENT

1. Chief Judicial Magistrate, Amreli, acquitted the present respondents of charges punishable under Sections 323, 324, 504 and 114 of Indian Penal Code and Section 135 of the Bombay Police Act by a judgment and order rendered in Criminal Case No.2105 of 1992 on November 30,

1993.

2. A First Information Report came to be lodged by one Babubhai Naranbhai Harijan of village Malila, taluka and district Amreli on July 3, 1992, alleging that his brother Nanji was being assaulted upon at about 7.00 in the morning which was noticed by him. He, therefore, intervened and, therefore, he was assaulted upon by the respondents. In the meanwhile, his wife-Savita also arrived, who was also assaulted upon. All of them have sustained injuries. According to him, the incident occurred in light of an earlier incident when his father was beaten by accused-Savji Bechar and a complaint was lodged in that regard. On the basis of the F.I.R., an offence was registered and investigated upon. The Investigating Officer, having found sufficient evidence against the present respondents, filed a charge sheet in the Court of learned Chief Judicial Magistrate, Amreli. The accused persons denied the charges and the learned Chief Judicial Magistrate, therefore, proceeded with the trial. Considering the evidence led by the prosecution, the learned Chief Judicial Magistrate came to a conclusion that the evidence led by the prosecution cannot be said to be beyond shadow of doubt and conviction, therefore, cannot be recorded. He, therefore, acquitted the respondents of the charges by the impugned judgment and order. Aggrieved by the said judgment and order, the State has preferred the present appeal.

3. Learned Additional Public Prosecutor-Mr. Bukhari is present. The respondents, though served with the notice, have chosen not to appear before this Court. The record and proceedings of the Trial Court are before this Court.

4. Learned Additional Public Prosecutor-Mr. Bukhari has vehemently contended that the reasoning adopted by the Trial Court is erroneous. He submitted that the Trial Court has indicated lacuna in the evidence of the eye-witnesses and has refused to accept the oral testimony on oath of the victims of the incident. Mr. Bukhari submitted that there was no reason for the complainant and other injured eye-witnesses to falsely implicate the accused persons. This aspect has been overlooked by the learned Trial Judge. Mr. Bukhari submitted that minor contradictions or discrepancies are bound to creep in the evidence of such rustic villagers. He submitted that the discrepancies are not of a nature which would affect the merits of the prosecution case. He, therefore, urged that the judgment and order impugned

herein may be quashed and set aside by allowing this appeal.

5. This Court has gone through the record and proceedings, the evidence on record and the judgment and order impugned herein.

6. It transpires that, there was animosity between the side of the complainant and the side of the accused. Animosity is a situation which favours both the prosecution and the defence and which goes adverse both to the prosecution and the defence. The evidence of the witnesses, therefore, would call for a close scrutiny along with other circumstances.

7. In the instant case, the victim eye-witnesses have been examined by the prosecution. Their say is that they were assaulted upon and abused by the present respondents at the time of the incident. They give full description about the part of the body on which the injuries were sustained and the nature of the injuries. Ordinarily, such minute details would have made the prosecution case stronger, but in the instant case, the evidence of the injured eye-witnesses does not get any support from the medical evidence. The medical evidence indicates that the injuries sustained by the witnesses were on different part of the body and/or the injuries were of a different nature and were not possible with the weapon alleged to have been used. The evidence of the eye-witnesses, therefore, creeps under a cloud of doubt and becomes shaky. Independent witness like doctor, who has no axe to grind, does not support the prosecution case.

8. It also requires to be noted that when the incident occurred, admittedly, about 25 to 30 people had gathered. None of these independent witnesses is sought to be examined. An attempt is made to improve upon the story, so as to fit into the requirements of the prosecution case. All these factors taken collectively would lead to a conclusion that the prosecution case cannot be said to have been proved beyond reasonable doubt.

9. Eye-witness-Babu Naran (Ex.26) says that the incident occurred on July 3, 1992 at 7.00 A.M. He noticed that Magan Savji and others were quarrelling with Nanji, his brother. According to him, there was a scuffle going on amongst them and on his attempt to intervene, Magan Savji inflicted two stick blows on his throat (neck). He, therefore, fell down. Thereafter,

accused Savji Bechar inflicted a blow on his back with a pipe. In the F.I.R. (Ex.27), he has stated that Magan Savji had a stick in his hand with which he gave two blows on his back. Thus, the version that is given by this witness before the Court is contrary to his own F.I.R. As if this is not enough, the medical evidence of Dr. Gheewala (Ex.42) does not support either of the two versions of the said witness-Babubhai Naranbhai. The doctor has said in clear terms that the injuries found on person of Babu Naran were not possible either with a stick or with a pipe.

10. Likewise, witness-Nanjibhai Naranbhai (x.28) says that Magan Savji inflicted two stick blows on the back of Babu Naran and Savji Bechar inflicted a pipe blow on back of Babu Naran. He says that Savitaben was caused injury by Maniben with a stick. According to him, no person had gathered. As against that, the say of Babu Naran is that about 25 to 30 persons had gathered. Here again, according to Dr. Gheewala, the injuries claimed to have been sustained by witness-Nanji because of kick and fist blows given by the accused persons were not possible.

11. As regards the injuries on person of Savitaben, the doctor says that the injuries were found on back and left breast of Savita, but the injuries were not such as could be caused with a stick whereas, according to Savitaben, stick blows were inflicted on her.

12. It has thus been found by the learned Trial Magistrate that the evidence led by the prosecution is self-contradictory and insufficient. The evidence is shaky and unbelievable and he, therefore, recorded acquittal giving benefit to the accused persons. Having given a thoughtful consideration to the contentions raised by Mr. Bukhari, reasonings adopted by the Trial Court and conclusions arrived at by it, this Court is of the view that no manifest error either of fact or of law can be said to have been committed by the Trial Court. It cannot be said that the view taken by the Trial Court is impossible one and, therefore, this Court is not inclined to accept this appeal. The appeal, therefore, must fail and the same is dismissed.

[A. L. DAVE, J.]

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